

## § 230.438

may dispense with the requirement for the registrant to file the written consent of Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) as required by Section 7 of the Act (15 U.S.C. 77g) where:

(1) The registrant has not already obtained the written consent that would be required if not for this section;

(2) The registrant is not able to obtain the written consent after reasonable efforts; and

(3) The registrant discloses clearly any limitations on recovery by investors posed by the lack of consent.

[67 FR 13537, Mar. 22, 2002]

### § 230.438 Consents of persons about to become directors.

If any person who has not signed the registration statement is named therein as about to become a director, the written consent of such person shall be filed with the registration statement. Any such consent, however, may be omitted if there is filed with the registration statement a statement by the registrant, supported by an affidavit or affidavits, setting forth the reasons for such omission and establishing that the obtaining of such consent is impracticable or involves undue hardship on the registrant.

[Reg. C, 12 FR 4074, June 24, 1947]

### § 230.439 Consent to use of material incorporated by reference.

(a) If the Act or the rules and regulations of the Commission require the filing of a written consent to the use of any material in connection with the registration statement, such consent shall be filed as an exhibit to the registration statement even though the material is incorporated therein by reference. Where the filing of a written consent is required with respect to material incorporated in the registration statement by reference, which is to be filed subsequent to the effective date of the registration statement, such consent shall be filed as an amendment to the registration statement no later than the date on which such material is filed with the Commission, unless express consent to incorporation by reference is contained in the material to be incorporated by reference.

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(b) Notwithstanding paragraph (a) of this section, any required consent may be incorporated by reference into a registration statement filed pursuant to Rule 462(b) under the Act (§ 230.462(b)) from a previously filed registration statement relating to that offering, provided that, the consent contained in the previously filed registration statement expressly provides for such incorporation.

[47 FR 11441, Mar. 16, 1982, as amended at 60 FR 26615, 26617, May 17, 1995]

### §§ 230.445–230.447 [Reserved]

FILINGS; FEES; EFFECTIVE DATE

### § 230.455 Place of filing.

All registration statements and other papers filed with the Commission shall be filed at its principal office, except for statements of Form SB-1 (§ 239.9 of this chapter) and Form SB-2 (§ 239.10 of this chapter). Registration statements on Form SB-1 or SB-2 may be filed with the Commission either at its principal office or at the Commission's regional or district offices as specified in General Instruction A to each of those forms, except that registration statements and post-effective amendments thereto on such forms that are filed pursuant to Rule 462(b) (§ 230.462(b)) and Rule 110(d) (§ 230.110(d)) shall be filed at the Commission's principal office. Such material may be filed by delivery to the Commission through the mails or otherwise; provided, however, that only registration statements and post-effective amendments thereto filed pursuant to Rule 462(b) (§ 230.462(b)) and Rule 110(d) (§ 230.110(d)) may be filed by means of facsimile transmission.

[58 FR 65542, Dec. 15, 1993, as amended at 60 FR 26617, May 17, 1995]

### § 230.456 Date of filing.

The date on which any papers are actually received by the Commission shall be the date of filing thereof, if all the requirements of the act and the rules with respect to such filing have been complied with and the required fee paid. The failure to pay an insignificant amount of the required fee at the time of filing, as the result of a